Reservation for transgender community

Why in news?

Trans-persons in India have been fighting for the right to horizontal reservation for a long time.

How reservations are given in India?

- Reservation in India is given to historically oppressed and disadvantaged communities so that they have a right to affirmative action policies.
- Reservation in education and employment can be divided into two broad categories, namely, vertical and horizontal.
- **Vertical reservations** are provisions aimed at addressing social asymmetry arising out of caste hierarchy or social and educational 'backwardness' (in the case of OBCs).
- Includes: Reservations for Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC).
- **Horizontal reservation** provides affirmative policies for disadvantaged groups within categories cutting across all vertical groups.
- For example, disabled persons are guaranteed horizontal reservation in all the aforementioned vertical categories alike.

What is the NALSA judgement?

- A study conducted by the National Human Rights Commission revealed that in 2017, only 6% of transgender people were formally employed.
- In the *National Legal Services Authority of India (NALSA) vs Union of India (2014) case*, the Supreme Court ruled that transgender persons have a right to reservation.
- It also directed the Centre and the State Governments to take steps to treat them as *socially and educationally backward classes of citizens* and extend all kinds of reservation in education and employment.

What is the issue?

- The NALSA judgment entitles trans persons to reservations on constitutional grounds.
- But it does not, mention the nature of reservations - whether they are to be vertical or horizontal.
- **Interpretation -** It has largely been interpreted as directing reservations for transgender people in the OBC category as the bench identifies the community as 'a socially and educationally backward class'.
- Such 'backwardness based' reservation for trans people will come at a loss for them.
- **Dilemma -** Dalit, Bahujan and Adivasi transgender persons will have to make a choice between availing reservation either based on caste and tribal identity or gender identity.

- Under such conditions, they will have to choose between a rock and a hard place.
    - Either compete with cis-gendered SC, ST persons.
    - Or compete with other caste transgender persons, and cis-gendered persons from OBC communities.
- **Demand -** SC, ST trans people should be able to avail internal reservation in their categories (Horizontal reservations).

What has happened so far on horizontal reservations?

- There has been no direction from the Central government on delivering on the right to reservation for trans persons so far.
- The Transgender Persons (Protection of Rights) Act of 2019 did not have any mention of reservation neither vertical nor horizontal.
- **Earlier attempts -** The Rights of Transgender Bill, 2015 (private bill) which had provisions for reservation for trans persons in the public and private sector was rejected in the Lok Sabha.
- The Transgender Persons (Protection of Rights) Bill, 2016 (introduced by the Centre) had no provision for reservations.
- A parliamentary standing committee set up under the Ministry of Social Justice in 2018, recommended reservations for transgender persons.
- **In States -** In 2015, the Tamil Nadu government decided to categorise (only) transwomen under the Most Backward Classes (MBC) category.
- After Sangama v State of Karnataka case, Karnataka became the first and only state to offer 1% horizontal reservation to transgender persons in 2021.
- In 2023 April, transgender persons were included in the OBC category in Madhya Pradesh.

What is the status of the case in Maharashtra?

- The Bombay High Court is hearing a petition filed to include transgenders for recruitment in MahaTransco.
- The Bombay HC requested a clarification to the Maharashtra government.
- In response the Maharashtra government said that providing additional reservations for transgender persons in education and public employment will be difficult.
- The state government had earlier issued a government resolution (GR) for recruitment of transgenders in employment and education.
- The GR stated that an expert committee would be set up under the social justice department comprising 14 members.
- The bench adjourned hearing in the plea for the expert committee to consider the aspect of reservation first.

References

1. IE - Reservation for transgender community
2. Hindustan Times - Providing additional reservation for transgenders seems difficult



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